



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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In Reply Refer To:

1610 (930)
Jack Morrow Hills Coordinated Activity Plan

JUL 19 2006

The Honorable David A. Freudenthal
Governor of Wyoming
State Capitol Building
200 West 24th Street
Cheyenne, WY 82002

Dear Governor Freudenthal:

Thank you for providing comments regarding the consistency review for the Final Environmental Impact Statement (FEIS) for the Jack Morrow Hills Coordinated Activity Plan/Proposed Green River Resource Management Plan Amendment. Land use plans are designed to balance public demands for various land uses while ensuring appropriate levels of resource protection. Your letter in response to the FEIS addresses a variety of comments. We have attached a summary of your comments and the Bureau of Land Management's (BLM) responses.

We appreciate your interest and involvement in the BLM planning process and recognize the State's vital stake in the management of the public lands and minerals in the Jack Morrow Hills area. We also wish to express our thanks for the efforts of the State's staff, State data sources, and valuable input provided as a cooperating agency in this process. We look forward to a continuing partnership as we implement this project.

If you have any questions, or wish to further discuss any issues or concerns regarding the plan, please call Mike Holbert, Rock Springs Field Manager, at 307-352-0201, or Marty Griffith, Acting Deputy State Director for Resources Policy and Management, at 307-775-6113.

Sincerely,

Robert A. Bennett
State Director

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GOVERNOR'S OFFICE

Attachment

Jack Morrow Hills Coordinated Activity Plan

Governor's Consistency Comments and BLM's Response

1. Comment: State Lands-...“thank you for including the Activity Working Group (AWG) in the FEIS. Because the FEIS is the first document to officially adopt the concept, the Jack Morrow Hills will be the proving grounds for the effectiveness of integrated, state-federal decision-making. I look forward to the opportunities that the AWG will afford us as we move into the implementation phase of the plan.”

Response: The Wyoming BLM believes strongly in the involvement of public, agency, and other interests in the implementation process and welcomes the State as a partner in the establishment and operation of this working group.

2. Comment: Air Quality- “Section 1.6.3 of the FEIS correctly requires compliance with Wyoming's state implementation plans to protect air quality, but it contains an error related to Wyoming's air quality regulations. The second paragraph of that section references Chapters 1-11 of the Wyoming Air Quality Standards and Regulations. There are currently 14 chapters of regulations, with the number of chapters increasing or decreasing as the need for regulations changes. To avoid confusion, Section 1.6.3 should refer to the Wyoming Air Quality Standards and Regulations without reference to the chapter numbers.”

Response: The Wyoming BLM will refer to the Wyoming Air Quality Standards and Regulations without chapter numbers.

3. Comment: Sage Grouse (Pages 2-140, A 4-4)- “As released, the FEIS did not contain adequate protections for the species. With the potential Endangered Species Act implications related to the sage-grouse, the State wants to ensure that every scientifically-based, meaningful and balanced approach to sage-grouse conservation is considered. ...it appears that the FEIS has been strengthened by the insertion of a map, Map 50 was cited as the reference for locations of potential sage-grouse nesting habitat. Because Map 50 does not provide a concise rendering of where the nesting habitat is in the Jack Morrow Hills, the refinement that the attached map provides is necessary.”

Response: As a result of comments provided on the Supplemental Draft EIS, BLM and the Wyoming Game and Fish Department identified sage-grouse nesting, brood-rearing, and winter habitats. This information was included in the FEIS in text and maps. However, the map information was included with other surface disturbance information which caused some confusion. A sage-grouse habitat map was posted for clarification on the internet during the 30-day FEIS protest period. A map of the sage-grouse habitats, without the other resource information, has been included in the CAP. We received several protests with similar concerns regarding management of sage-grouse in the JMH CAP planning area. As a result of these concerns, we have provided additional text and maps in the Plan to clarify the management of sage-grouse and sage-grouse habitat.

The FEIS proposed designating all the breeding habitat and winter range as Controlled Surface Use areas, restricting surface disturbing activities. This is more restrictive than the prescription in the Green River RMP. We will follow guidelines in Appendix 6 to delineate potential sage-grouse habitat. Site visits will identify habitats and areas actually occupied by sage-grouse. This targeted approach will provide more precise delineation of sage-grouse habitat needing protection. Exceptions to the Controlled Surface Use requirements may be granted where there would be no impact to the birds.

4. Comment: Sage Grouse- “For the sage-grouse protection measures, outlined in the FEIS to be meaningful, it will require BLM’s direct consultation with the Wyoming Game and Fish Department, diligent monitoring and the resolve to include stipulations and conditions of approval when and where such safeguards are necessary.”

Response: Wyoming BLM has identified the sage-grouse as a sensitive species and has significantly increased funding for inventory and monitoring in the Rock Springs Field Office to increase our knowledge of sage-grouse and their habitats. Aerial surveys for wintering and breeding sage-grouse and vegetation mapping based on refining satellite imagery are completed. These were used (in cooperation with the Wyoming Game and Fish Department) to delineate sage-grouse breeding habitats and winter ranges. As described in Appendix 17, BLM will use the NEPA process to evaluate impacts that may affect habitats and/or populations and identify appropriate actions.

We will apply appropriate mitigation after site-specific analysis and coordination with affected interests. Coordination with the Wyoming Game and Fish Department will continue to occur through direct consultation with the Wyoming Game and Fish Department’s Southwest Sage-Grouse Working Group. The State of Wyoming is also invited to participate in the JMH CAP Working Group, where specific monitoring and mitigation will be established for the Jack Morrow Hills area. BLM looks forward to continuing the working relationship with the Wyoming Game and Fish Department developed during preparation of the JMH CAP.

5. Comment: Buy-Back (Section 2.1.3.9)- “...the reference to buy back discounts this potentially beneficial tool. In the Alternatives and Management Options Considered but Eliminated from Detailed Analysis, the FEIS states: “the current level of oil and gas production as a whole does not cause major conflicts with other resources or resource uses. In addition, buy back of producing mineral leases would not be cost effective.” The decision to exclude buy-back from the analysis is disappointing on several levels. First, the State recognizes that the Jack Morrow Hills, in particular Area 3, contains highly prized resource values. To cite cost effectiveness as a reason to not employ a tool to protect the value of a small biologically, spiritually and culturally important area is unacceptable.”

Response: While we did not analyze alternatives that solely focused on oil and gas lease buy-backs, the Final EIS, Chapter 2, section 2.1.3.9 contains the statement: “However, the alternatives analyzed in detail do include consideration of buy back of non-producing leases.”

We believe impacts from anticipated levels of oil and gas exploration and development can be addressed by applying the proposed mitigation measures (FEIS pages 2-77 through 2-107 and

Table 2-2). Alternative 2 in the FEIS analyzes buying back existing non-producing leases from willing sellers (FEIS page 2-56), and the proposed plan in Section 2.7.6.1 states that buyout or exchange of existing leases from willing sellers may be considered on a case-by-case basis. Congressional legislation would be required to fund lease buyouts (proposed plan FEIS page 2-96). Congress would need to authorize the exchange of existing leases within the JMH CAP for lease rights outside the planning area. Not all leased areas within the JMH CAP contain the sensitive or significant resources that would warrant the buy back of leases.

A detailed discussion of the oil and gas management areas is provided in Appendix 17 (FEIS pages A17-3 to A17-7). The area boundaries reflect resource sensitivity, oil and gas development potential, and existing lease rights. Area 1 is an area where resource values and oil and gas development effects are adequately mitigated by current practices. Area 2 is an area of greater resource values and management complexity requiring enhanced protection measures. Area 3 reflects an area of high concentrations of resource values, including the majority of critical wildlife habitat, and therefore will be closed to future oil and gas leasing or in some areas leased with an NSO stipulation.

6. Comment: “Second, the use of “cost effectiveness” to justify eliminating buy-back from the analysis is even less persuasive when read in the context of the previous sentence, which states: the current level of oil and gas production as a whole does not cause major conflicts with other resources or resource uses...To preclude the consideration of buy-back based on the current intensity of development is short-sighted”.

Response: The current level of oil and gas production as a whole does not cause major conflicts with other resources and resource uses. The NEPA analysis shows that not all areas contain sensitive or significant resources that would warrant buy back of producing leases. BLM does not anticipate a large amount of new development that would lead to unacceptable levels of adverse effects in all areas with existing leases. The proposed plan in Section 2.7.6.1 of the FEIS states that buyout or exchange of existing leases from willing sellers may be considered on a case-by-case basis. Congressional legislation would be required to fund lease buyouts (proposed plan FEIS page 2-96). Buyouts can be considered as a potential management tool for the JMH CAP planning area. Appendix 16 in the FEIS provides economic information relating to lease buyouts.

7. Comment: “Finally, the FEIS, while recognizing that there are more than minor impacts to the area recites a solution that emphasizes tight control—“To this end, the planning area is divided into three regions that represent the relative importance of the contained resource values. Surface disturbing or disruptive activities will be tightly controlled where the most overlapping sensitive values are located. ...” (Appendix A17-3). While the tight control principle might be a laudable concept and may yield positive results, some impact simply cannot be “controlled”. As such the buy-back concept should be included in the Record of Decision as a tool to be employed in those situations where the effects of development simply cannot be “controlled.”

Response: The buy-back language in the FEIS will be included in the CAP. Please see the response to comment 6. This language will recognize the opportunity to consider buy-back of

existing leases from willing sellers. As noted above, Congressional legislation would be needed to implement this action. Should mitigation measures within BLM authority prove insufficient to minimize effects, buy-back could be considered.

8. Comment: "...the scope of potential oil and gas development covers a broad range. As mentioned previously, the number of wells ranges from 255 to over 1,000. Because certainty is extremely important, especially when considering appropriate levels of mitigation, I suggest that the number of wells be capped at 255 in the Record of Decision. My suggested cap is derived from the analysis contained in the FEIS, which, in my view, is only sufficient to quantify the effects of 255 wells."

Response: Estimating and evaluating a range of oil and gas development allows BLM, through the NEPA process, to assess the potential effects of such development. We can determine under what circumstances continued development may be acceptable. This follows guidance in WO-IM-2004-089, "Policy for Reasonably Foreseeable Development (RFD) Scenario for Oil and Gas."

The Coordinated Activity Plan, as a subset of the Resource Management Plan, sets the land uses and allocations for the Jack Morrow Hills Area. When a specific drilling plan is proposed, BLM will analyze those effects in a NEPA analysis. At that time, we would determine if the proposed oil and gas development was within the bounds of the CAP analysis and if approving the proposal was consistent with the CAP decisions. Limiting or "capping" the number of wells as a CAP decision is inappropriate because we do not know with certainty either the pace or intensity oil and gas development may take.

Washington Office Instruction Memorandum No. 2004-089 "Policy for Reasonably Foreseeable Development (RFD) Scenarios for Oil and Gas" states: "The fact that the total number of wells in an area may exceed the total number of wells projected in the selected alternative does not automatically mean that a supplement to the NEPA document or a revision or amendment to the RMP is necessary. It is possible that exceeding the number of wells projected in the selected alternative may not result in exceeding the predicted level of environmental effects. Mitigation of environmental effects through successful reclamation, clustering wells on shared locations, and minimizing pad and road construction can prevent the level of impact from exceeding the impacts analyzed in the original RMP/EIS or other NEPA documentation

Under the Proposed JMH CAP, mineral resources would be developed in a sensitive manner, which would prevent unnecessary or undue degradation. The proposed JMH CAP provides direction for the use of impact reducing technologies, recognizing that BLM has the authority to address timing, siting, and development rates under the standard lease terms

9. Comment: Habitat- Fragmentation of Wyoming's wildlife habitat is occurring at a staggering rate due to development on federal, state and private lands. Protections should be required and rigidly enforced relative to crucial habitats. The language on page 2-88 generally recognizes this concept and endorses mitigation, in coordination with commodity users, as a centerpiece of the effort to protect wildlife habitat. Unfortunately, adequate

protection, including the use of stipulations, is not a truly viable option under the express language contained in Appendix 4.

Response: BLM shares the State of Wyoming's concern with loss of crucial habitats. Ascertaining the direct and indirect effects of habitat fragmentation, and subsequently, the appropriate mitigation is still an inexact science. Through site-specific environmental analysis and monitoring, we hope to increase our knowledge. The CAP identifies potential mitigation, such as, transportation planning; remote control of fluid mineral production facilities to limit travel; multiple-well pads to limit surface disturbances; limiting the number of pads per section in sensitive areas; use of directional drilling to minimize disturbance of sensitive areas; clustering or centrally locating ancillary facilities; shrub reclamation (containerized stock, transplanting, etc.) to restore, rehabilitate, or replace habitat; application of geotechnical material for construction; and potential unitization prior to exploration and development as potential mitigations for habitat fragmentation.

10. Comment: "...on page A4-2, overtures are made to a conservation-minded approach to Big Game Winter Ranges. ...The most crucial time period for these animals is usually from January 1 to March 15, and this is when the stipulation dates are generally enforced. However, the remaining time frames for the standard statewide stipulation allows the authorizing officer the option of enforcing a longer seasonal restriction if winter conditions warrant. Besides the fact that the time period is actually from November through April (see Appendix 4-"Criteria For Considering Exceptions to Seasonally Restricted Activity"), implicit in the language is the thought that the stipulations will not be enforced outside of the January through March timeline. Even with the provision for the authorizing officer to opt for longer seasonal restrictions, there is little information to guide the exercise of this discretion and thus does not provide much assurance that the big game herds will be adequately protected from November 15 to December 31. ... The Record of Decision should provide strong direction to implement stipulations mentioned in the FEIS or find alternatives that maintain or increase protection of wildlife. The Record of Decision should also require consultation with the Wyoming Game and Fish Department regarding any exemptions to stipulations."

Response: This is an error and will be changed to reflect the original November 15 to April 30 restrictions on habitat in the Record of Decision.

The statement in the CAP was not intended to modify the need for the timing restriction nor the length of the timing restriction, but to indicate that for the past several years, severe winter conditions have been most prevalent from January 1 until March 15. Clarification has been provided in Appendix 4 of the JMH CAP regarding seasonal restrictions. Following procedures in Appendix 5G of the existing MOU, we consult with the Wyoming Game and Fish Department on every exception request. Exceptions to lease stipulations will only be granted under the conditions outlined in Appendices 4 and 7 of the CAP (FEIS).

11. Comment: "... the BLM's interpretation of 43 CFR 3101.1-2, in Appendix 4, as it related to the inclusion of conditions of approval on federal leases, is not rooted in sound reasoning or policy. As cited earlier, Appendix 17 states, "...the planning area is divided

into three regions that represent the relative importance of the contained resource values. Surface disturbing or disruptive activities will be tightly controlled where the most overlapping sensitive values are located. ..." Whatever assurance the quoted language affords the reader, Appendix 4 erases. ...the language in appendix 4 deflates the reader's confidence that sensitive areas within the Jack Morrow Hills will be protected...."

Response: Thank you. This error is recognized in the previous comment, and will be corrected in the JMH CAP.

12. Comment: "A direct reading of 43 CFR 3101.1-2 does not implicate the high standard of proof that Appendix 4, and the Instruction Memorandum, purport to establish. Additionally, the cited CFR does not seem to indicate that the proponent of a protective or mitigating measure should be laden with the burden of proof. Rather the appropriate course should emphasize the relative importance of protection, where the burden of proof of these unique and special areas lies with BLM to determine why stipulations and other protections should not be applied."

Response: Thank you. BLM has and will continue to apply and enforce necessary COAs based on site-specific NEPA analysis that provides clear and convincing evidence for the need of such mitigation. Clarification language has been added to Appendix 4 and Appendix 5 of the CAP.

BLM will consult with Wyoming Game and Fish Department in accordance with the MOU that formalizes each agency's roles and responsibilities and coordination procedures. The criteria for exceptions to wildlife stipulations were developed with the Wyoming Game and Fish Department and, according to Appendix 5G of the MOU, the BLM will consult with the Wyoming Game and Fish Department on granting exceptions for individual projects and during preparation of EAs and EISs. Exceptions to lease stipulations will only be granted under the conditions outlined in Appendices 4 and 7.

13. Comment: "...the record of decision should provide consistency between the Jack Morrow Hills management direction and BLM regulations and reflect a conservation ethic where appropriate. ...the Energy Policy and Conservation Act (EPCA) and Instruction Memorandum 2003-137 set forth a comprehensive structure for assessing the effectiveness and need for existing stipulations and other existing protective measures. The standard set forth in EPCA and extending in IM 2003-137 is merely that, "Stipulations not necessary to accomplish desired resource protection should be modified or dropped using the exception, waiver or modification criteria outlined in the land use plan or through the land use planning process"...the Record of Decision should incorporate the following directive relative to the inclusion of COAs. "the need for a COA must be documented in a site-specific analysis if necessary. If the analysis indicates that a COA is necessary to accomplish the desired resource protection, it should be included."

Response: Thank you, similar language as you suggest has been provided in Appendix 4 of the JMH CAP.